

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.2400 OF 2006
IN
FIRST APPEAL NO.1114 OF 2006

Barnes School & Anr. ...Applicants

vs.

Smt.Arzoo a. Baker ...Respondent

Mr.C.K.Naidu i/b M/s.C.K.Naidu & Co.for the Applicants
Mr.Anilkumar Patil for the Respondent.

CORAM: A.S.OKA, J.
DATED: JULY 20, 2006.

P.C.:

1. Rule. The learned Advocate for Respondent waives service. Taken up for hearing forthwith. The Respondent is the legal representative of late Allan Baker who was working in the Appellant-School as a Principal. He died on 22nd December 2000. The operative part of the decree passed against the Applicants (Appellants) reads thus :

"2. Defendants are directed to fix the pay scale of deceased Allan Baker as per the recommendations of 5th Pay Commission with effect from the date of the Government of Maharashtra issued Government Resolution making 5th Pay Commission applicable to the teacher in private school and pay the dues to the plaintiffs with interest @ 12% p.a. from the date of suit until its realisation."

2. Shri Naidu for the Appellants submitted that as the Appellant No.1 is a school and the Appellant No.2 is a society which is conducting by the Appellant No.1-school, stay may be granted subject to furnishing security to the satisfaction of the Registrar of this Court. He submitted that order of deposit may not be passed. The learned Counsel for the Respondent submitted that the impugned Judgment and Award is in the nature of a money decree and therefore, stay cannot be granted.

3. I have considered the submissions. By the impugned decree the trial court has directed the Applicants to fix the pay scale of the deceased Principal of the school as per the recommendations of 5th Pay Commission and pay the requisite amount to the Respondent with interest thereon at the rate of 12% p.a. from the date of suit. The direction is to pay the salary of the deceased Principal as per the recommendations of the 5th Pay Commission with effect from the date of Government Resolution of the relevant G.R.

4. It is well settled rule that normally stay cannot be granted to a money decree unless entire amount due and payable under the impugned Judgment and Decree is deposited. Considering the fact that the Applicant no.1 is a school and Applicant No.2 is an educational society, stay can be granted subject to deposit of principal amount with the trial Court.

5. Hence, Civil Application is disposed of by passing the following order :

i) There will be interim relief in terms of prayer clause (a) subject to the condition of the Applicants depositing in the Trial Court the principal amount due and payable as per the impugned Judgment and Decree within a period of 12 weeks from today. If amount is not deposited within stipulated period, stay granted will stand vacated. If the amount is deposited, the Plaintiff will be entitled to withdraw 50% of the said amount on furnishing bank guarantee of any nationalised bank to the satisfaction of the Trial Court. The Plaintiff will be permitted to withdraw the balance 50% of the amount on furnishing security to the satisfaction of the Trial Court. Before accepting the security, the Trial Court will hear the Applicants.

ii) If the amount deposited by the Applicants is not withdrawn by the Respondent within a period of six months from the date of deposit of the amount, the Trial Court will invest the said amount in fixed deposit in any nationalised bank initially for a period of three years. The fixed deposit shall be renewed from year to year till the final disposal of the Appeal.

iii) No order as to costs.

Judge.